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Sheila

CH2M HILL

FAX TRANSMITTAL REQUEST FORM
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DATE: 3 March 1992

PROJECT NUMBER: PDX30702.PA.NP

FAX OPERATOR: _____

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TO: Pat Young and Norman Lovelace OFFICE:

FIRM NAME: USEPA

CITY: San Francisco STATE: CA COUNTRY: USA

Fax Phone Number: 415-744-1604 Verification Phone Number: 7441591

Total number of pages, including this page: 8 Return original?: ■ YES ☐ NO

From: Steve Costa Office: SFO Employee No.: 5932

IF YOU DO NOT RECEIVE ALL OF THE PAGES OR THE TRANSMISSION IS UNCLEAR, PLEASE CONTACT YOUR FAX OPERATOR.

REMARKS:

Pat,

FYI: material sent to Doug Liden re: NPDES Draft Permits (preliminary) Please copy Norman Lovelace. Give me a call if you have any questions

Thanks, Steve

Doug,

Attached are comments on the preliminary draft of the canneries NPDES permits. Please give me a call with any questions and to set up a meeting, if you think it is necessary.

Regards,

Steve

Date Fax Received: _____ Time: _____ ☐ AM ☐ PM

MEMORANDUM CH2M HILL

TO: Doug Liden/USEPA

COPIES: Norman Wei/StarKist Seafood
James Cox/Van Camp Seafood
Norman Lovelace/USEPA
Pat Young/USEPA
Sheila Wiegman/ASEPA

FROM: Steve Costa/CH2M HILL/SFO

DATE: 3 March 1992

SUBJECT: Comments on Preliminary Draft NPDES Permits:
Joint Cannery Outfall, Pago Pago Harbor, American Samoa

PROJECT: PDX30702.PA.NP

A preliminary review of the draft NPDES permits for both canneries indicates that a number of items include areas for further discussion with USEPA and ASEPA. The list below does not include the flow limitation on Samoa Packing which is being addressed separately. I am available for a meeting with you, prior to the public release of the draft permit, to discuss any or all of the issues discussed below.

The issues involving effluent limits and monitoring have been discussed, or indicated as areas of concern, prior to the review of this draft. Some of the language in the draft permit, particularly under Discharge Specifications (Section B), is of extreme concern and represent major problems with the draft permit. If the permit language is left as is the canneries would be in violation of permit conditions at the time the permit becomes effective. The specification of end of pipe limitations does not consider the existence of, or rationale for, a zone of mixing.

The number and complexity of the studies requested was surprising and appears onerous and costly. As environmental consultants for the canneries, we cannot justify the necessity for all of the studies proposed in the preliminary draft permit. These studies are discussed below in the list of issues we believe require further consideration.

\jcnpdes\prmtcndn.mem

A. EFFLUENT LIMITS AND MONITORING REQUIREMENTS

[1] **Monitoring for TN and TP** is described as a choice of two options:

- monitoring twice weekly on production days, or
- if the canneries wish to monitor on a non-production day, then monitoring will be done for six consecutive days following the non-production day.

Regardless of the option used all samples taken during the month will be used in calculating the "monthly average".

The first of the monitoring schedules (twice/week) provides a high (conservative) estimate of monthly average loading since the calculated average will not account for reduced loadings on non-productions days.

The second of the monitoring options provides for accounting for the reduced loadings on non-production days. The rationale behind this approach recognizes the slow response time Pago Pago Harbor and the fact that variability in the overall harbor concentrations of TN and TP will not be measurably influenced by daily variations in loading. Therefore reduced loadings on non-production days can be balanced with increases in loadings on production days without violations of water quality standards. We agree with the rationale for this option. However, the manner in which it is presented requires 7 days of monitoring each week if non-production days are to be accounted for. This would effectively require continuous monitoring, both non-production and production days, to account for any non-production day loadings.

We feel that it is not necessary to require what is effectively continuous monitoring (every day of the month) in order to account for non-production days. There are a variety of alternate monitoring approaches that could be used. We recommend either of the following to reduce the number of days of required sampling:

- Sample twice per week during production days and on every non-production day that the canneries desire to count in the

monthly average. Use a weighted average to calculate monthly loadings.

- Sample approximately 40 percent of the non-production days (to match the twice per week production day sampling frequency) and use a weighted average to calculate monthly loadings.

We realize the monitoring schedule proposed by EPA is a conservative approach and provides for the use of non-production day monitoring data under the most conservative conditions. The approach appears to be one of not allowing any low values to be averaged into the loading calculation unless all days are accounted for. This is apparently done to insure that there is no possibility of calculating a number that is not equal to or higher than the actual average. This element of conservatism is unwarranted given the conservative assumptions that have been used during the development of the zone of mixing and the conservative nature of the loading limitations proposed in the draft (preliminary) permit compared to the predictions of the models used. It is not necessary to place a third level of conservatism on top of the already conservative approach.

The existing data base provides a good characterization of the distribution of production day loadings. The distribution approximates a random distribution except near the high end. Therefore, the use of either of the two sampling schemes suggested above is highly unlikely to result in an underestimate of monthly average loading for any given month, and will not result in underestimates over periods of a few months or more.

[2] **Ammonia limits** are based on two samples (one from each cannery). The limit proposed is prudent (based on a factor of approximately two higher than measured for a 30 second maximum exposure time for entrained organisms) for preliminary purposes. However, the actual concentration should be monitored and reported for a period of time (1 year or more) prior to the setting of discharge limits. We also feel that additional information on the behavior of ammonia, in the type of effluent discharged and in a marine receiving water environment, would result in a lower level of concern with potential toxic effects.

[3] **Total Residual Chlorine (TRC):** The zone of initial dilution (ZID) should provide for TRC limitations. TRC limitations should be applied at the edge of the ZID rather than the end of the pipe. Chlorine is required in processing and it is not feasible to modify the process. Nor is it feasible to routinely dechlorinate in a setting such as American Samoa where shipping, storage, and technical capabilities are not always adequate.

The previous discussions with USEPA and ASEPA concerning a ZID for un-ionized ammonia should apply to TRC as well (see meeting notes for 26 Dec 1991 meeting). The American Samoa Water Quality Standards allow a zone of initial dilution and zone of mixing. The initial dilution process is very rapid and high dilutions are achieved and exposure times to entrained organisms can be maintained on the order of seconds to a few minutes with sufficient dilution to achieve concentrations below defined chronic levels.

A major additional problem with TRC is the difficulty of measuring TRC at low levels. This problem is compounded by the turbidity, high organic content, and (for StarKist) the high sea water content of the effluent. Discussions with the leading instrument manufacturer (HACH INSTRUMENTS) indicates that sophisticated and carefully done laboratory techniques will be required. There appears to be no instrument that will reliably or accurately measure the levels of TRC in the effluent.

Additional information on the behavior of residual chlorine in the high organic content effluent discharged and in a marine receiving water environment is needed to adequately assess the potential levels of TRC at the end of the pipe and the edge of a ZID. Such information would probably result in a lower level of concern with potential toxic effects.

B. DISCHARGE SPECIFICATIONS

[1] **Dissolved oxygen** limits at the end of the pipe is a serious problem. This is an end of pipe requirement as it is written. We have no measurements of DO at end of pipe with the new outfall but do know that this condition will not be met at the end of pipe. The high oxygen demand and longer travel time through the pipe, particularly under low effluent flows, should be considered. We feel that the DO requirement

 Not less than 70% saturation or less than 5.0 mg/l. / or ambient level if less

must account for the establishment of the mixing zone. This was recognized in the preparation of the application for the zone of mixing (see Table 3 in the application). The establishment and approval of a zone of mixing has been the basis for the construction of the extended joint cannery outfall. The application of end of pipe limitations of this type is counter to the conditions and understanding which form the basis from which the joint cannery outfall project has been undertaken.

[2] Similar comments for **turbidity** as for DO above.

[3] **Toxicity** is also written as an end of pipe requirement. We feel that the requirement should be at the edge of the zone of mixing or a ZID established for specified constituents of concern (the ZID may need to be specified).

C. TOXICITY

We have some questions concerning the schedule, holding times for effluent if the tests are done off island, whether or not they can be done on island, and how representative the tests can be in either case. In particular, the problem of holding time of effluent samples needs to be addressed. Are constituents of concern stable, and is the generation of other constituents during shipping effluent samples a potential problem?

We understand the reasons for the tests but believe that more information and better defined procedures are required prior to starting the tests. Therefore, we would recommend an initial period of development of site specific objectives, protocols, and procedures. An assessment of the usefulness of the tests and addressing whether they can be conducted in a meaningful fashion is indicated. The first test in 90 days appears unrealistic and we urge a development period prior to initiating the testing.

D. RECEIVING WATER QUALITY MONITORING PROGRAM

[1] Additional stations around the zone of mixing zone are reasonable but the elimination of some of the other stations should be considered. Since the discharge will be moved out of the inner harbor, the spacial detail in the inner harbor is not necessary and the number of stations in

Keep

the inner harbor can be reduced. Stations 12, 11a, 9a, 8, and 8a appear either redundant with the new stations or are not required to assess impacts of the new discharge location.

[2] Measuring un-ionized ammonia is indirect (measure ammonia and calculate un-ionized ammonia). As far as I know, there are no well recognized equilibrium constants for sea water.

Total

E. DYE OR TRACER STUDIES

Quarterly studies are not needed. One study to calibrate and verify models and to document diffuser performance is sufficient. At most two studies at the two different oceanographic conditions should be considered. However, it is our opinion that the additional information gathered during a second test would be of marginal value.

We perform dye studies routinely for a wide variety of discharges, they are costly and labor intensive. A single study is generally all that is required. Such studies are almost always used for verification and more than one is redundant and is not necessary.

F. SEDIMENT MONITORING

The sediment monitoring should be combined with the water quality monitoring and samples collected at the same time as the water samples during the selected month of the year. Attention needs to be given to the analysis techniques and the conclusions drawn from the data. For example: measurement of total phosphorous in sediments will include both organic and inorganic sources and have little relationship to the information desired.

5

G. EUTROPHICATION STUDY

We feel that the eutrophication study may not be practical and it may not be technically or economically feasible to conduct such a study to the level required to provide direct and meaningful information about the impact of the cannery discharges. We feel that the monitoring program addresses the same questions and provides direct information about the impacts of the cannery discharges.

5

H. CORAL REEF SURVEY

We see two problems with the coral reef survey as described:

- The time frame requested (annual) is probably not necessary and changes may not be readily observable with respect to the influences of the cannery discharge on that time scale.

- The number of transects is too limited to attempt to separate impacts due to specific localized causes.

We suggest one survey after three to five years be done for transects throughout the harbor. This will provide a better assessment of impacts and a more reasonable chance of isolating the reasons for particular changes.

I. HARBOR-WIDE CIRCULATION STUDY

To do a circulation study that will add any significant knowledge will be extremely complex and costly. We see no reason to simply gather additional data, which is what the study description indicates is required. As described in the Feasibility Study, the circulation is predominantly wind driven. To significantly increase understanding of the circulation will require an extensive field data collection and modeling effort (costs estimated at $300,000 to $500,000). To simply do a few more drogue releases and put in a few current meters for a short period would not add any significant knowledge about the circulation, flushing, and dispersion in the harbor. Analysis of the results of the monitoring program are more valuable in terms of understanding the circulation in the harbor than a repetition of previous current studies.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, Ca. 94105-3901

February 27, 1992

Sheila Wiegman
Environmental Coordinator
American Samoa Environmental
Protection Agency
Office of the Governor
Pago Pago, American Samoa 96799

Dear Sheila:

Enclosed are 10 copies of Region 9's standard NPDES permit conditions which will be attached to the canneries' draft permits when they are public noticed. To save fax paper, I'm mailing them to you and when we fax you the draft permits, you can attach these conditions to copies of the drafts prior to distribution to the local agencies/NGO. Of course the standard conditions are the same for both permits.

Also, I've attached a mailing list of recipients of the draft permits. If you have any other agencies or people to add, let me know.

Thanks for your help.

Sincerely,

Pat

Pat Young
American Samoa Program Manager

Enclosures

ATTACHMENT

EPA REGION I. STANDARD FEDERAL NPDES PERMIT CONDITIONS
(Updated as of May 10, 1990)

1. Duty to Reapply [40 CFR 122.21(d)]

The permittee shall submit a new application 180 days before the existing permit expires. 122.2(c)(2) POTW's with currently effective NPDES permits shall submit with the next application the sludge information listed at 40 CFR 501.15(a)(2).

2. Applications [40 CFR 122.22]

a. All permit applications shall be signed as follows:

1) For a corporation: by a responsible corporate officer. For the purpose of this section, a responsible corporate officer means:

i) A president, secretary, treasurer, or vice-president of the corporation in charge of a principle business function, or any other person who performs similar policy- or decision-making functions for the corporation, or

ii) the manager of one or more manufacturing, production, or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding $25 million (in second-quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

2) For a partnership or sole proprietorship: by a general partner or the proprietor, respectively; or

3) For a municipality, State, Federal, or other public agency: By either a principal executive officer or ranking elected official. For purposes of this section, a principal executive officer of a Federal agency includes: (i) The chief executive officer of the agency, or (ii) a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., Regional Administrators of EPA).

b. All reports required by permits and other information requested by the Director shall be signed by a person described in paragraph (a) of this Section, or by a duly authorized representative of that person. A person is a duly authorized representative only if:

1) The authorization is made in writing by a person described in paragraph (a) of this section;

2) The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity such as

the position of plant manager, operator of a well or a well field, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company. (A duly authorized representative may thus be either a named individual or any individual occupying a named position.) and,

3) The written authorization is submitted to the Director.

c. Changes to authorization. If an authorization under paragraph (b) of this section is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of paragraph (b) of this section must be submitted to the Director prior to or together with any reports, information, or applications to be signed by an authorized representative.

d. Certification. Any person signing a document under paragraph (a) or (b) of this section shall make the following certification:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

3. Duty to comply [40 CFR 122.41(a)]

The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Clean Water Act and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or denial of a permit renewal application.

a. The permittee shall comply with effluent standards or prohibitions established under section 307(a) of the Clean Water Act for toxic pollutants and with standards for sewage sludge use or disposal established under section 405(d) of the CWA within the time provided in the regulations that establish these standards or prohibitions, even if the permit has not yet been modified to incorporate the requirement.

b. The Clean Water Act provides that:

1) Any person who causes a violation of any condition in this permit is subject to a civil penalty not to exceed $25,000 per day of each violation. Any person who negligently causes a violation of any condition in this permit is subject to a fine off not less than $2,500 nor more than $25,000 per day of violation, or by imprisonment for not more than one year, or both for a first conviction. For a second conviction, such a person is subject to a fine of not more than $50,000 per day of violation, or by imprisonment for not more than two years, or both. [Updated pursuant to the Water Quality Act of 1987]

2) Any person who knowingly causes violation of any condition of this permit is subject to a fine of not less than $5,000 nor more than $50,000 per day of violation, or by imprisonment for not more than three years, or by both for a first conviction. For a second conviction, such a person is subject to a fine of not more than $100,000 per day of violation, or by imprisonment of not more than six years, or both. [Updated pursuant to the Water Quality Act of 1987]

3) Any person who knowingly causes a violation of any condition of this permit and, by so doing, knows at that time that he thereby places another in imminent danger of death or serious bodily injury shall be subject to a fine of not more than $250,000, or imprisonment of not more than 15 years, or both. A person who is an organization and violates this provision shall be subject to a fine of not more than $1,000,000 for a first conviction. For a second conviction under this provision, the maximum fine and imprisonment shall be doubled. [Updated pursuant to the Water Quality Act of 1987]

4. Need to halt or reduce activity not a defense [40 CFR 122.41(c)]

It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

5. Duty to mitigate [40 CFR 122.41(d)]

The permittee shall take all reasonable steps to minimize or prevent any discharge or sludge use or disposal in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

6. Proper operation and maintenance [40 CFR 122.41(e)]

The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems which are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of the permit.

7. Permit actions [40 CFR 122.41(f)]

This permit may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any permit condition.

8. Property rights [40 CFR 122.41(g)]

This permit does not convey any property rights of any sort, or any exclusive privilege.

9. Duty to provide information [40 CFR 122.41(h)]

The permittee shall furnish to the Director, within a reasonable time, any information which the Director may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit or to determine compliance with this permit. The permittee shall also furnish to the Director upon request, copies of records required to be kept by this permit.

10. Inspection and entry [40 CFR 122.41(i)]

The permittee shall allow the Director, or an authorized representative, upon the presentation of credentials and other documents as may be required by law, to:

a. Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;

b. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;

c. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and

d. Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the Clean Water Act, any substances or parameters at any location.

11. Monitoring and records [40 CFR 122.41(j)]

a. Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.

b. The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least 3 years from the date of the sample, measurement, report or application, except for records of monitoring information required by this permit related to the permittee's sewage sludge use and disposal activities, which shall be retained for a period of at least five years (or longer as required by 40 CFR Part 503). This period may be extended by request of the Director at any time.

c. Records of monitoring information shall include:

1) The date, exact place, and time of sampling or measurements;

2) The individual(s) who performed the sampling or measurements;

3) The date(s) analyses were performed;

4) The individual(s) who performed the analyses;

5) The analytical techniques or methods used; and

6) The results of such analyses.

d. Monitoring must be conducted according to test procedures approved under 40 CFR Part 136, or in the case of sludge use or disposal, approved under 40 CFR Part 136 unless otherwise specified in 40 CFR Part 503, unless other test procedures have been specified in this permit.

e. The Clean Water Act provides that any person who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained in this permit shall, upon conviction, be punished by a fine of not more than $10,000 per violation, or by imprisonment for not more than two years per violation, or by both for a first conviction. For a second conviction, such a person is subject to a fine of not more than

$20,000 per day of violation, or imprisonment for not more than four years, or both. [Updated pursuant to the Water Quality Act of 1987]

12. Signatory requirement [40 CFR 122.41(k)]

a. All applications, reports, or information submitted to the Director shall be signed and certified. (See 40 CFR 122.22)

b. The CWA provides that any person who knowingly makes any false statement, representation, or certification in any record or other document submitted or required to be maintained under this permit, including monitoring reports or reports of compliance or non-compliance shall, upon conviction, be punished by a fine of not more than $10,000 per violation, or by imprisonment for not more than two years per violation, or by both for a first conviction. For a second conviction, such a person is subject to a fine of not more than $20,000 per day of violation, or imprisonment of not more than four years, or both. [Updated pursuant to the Water Quality Act of 1987]

13. Reporting requirements [40 CFR 122.41(l)]

a. Planned changes. The permittee shall give notice to the Director as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required only when:

1) The alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source in 40 CFR 122.29(b); or

2) The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants which are subject neither to effluent limitations in the permit, nor to notification requirements under 40 CFR 122.42(a)(1).

3) The alteration or addition results in a significant change in the permittee's sludge use or disposal practices, and such alteration, addition, or change may justify the application of permit conditions that are different from or absent in the existing permit including notification of additional use or disposal sites not reported during the permit application process or not reported pursuant to an approved land application plan.

b. Anticipated noncompliance. The permittee shall give advance notice to the Director of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.

c. Transfers. This permit is not transferable to any person except after notice to the Director. The Director may require modification or revocation and reissuance of the permit to change the name of the permittee and incorporate such other requirements as may be necessary under the Clean Water Act (CWA). (See 40 CFR 122.61; in some cases, modification or revocation and reissuance is mandatory.)

d. Monitoring reports. Monitoring results shall be reported at the intervals specified elsewhere in this permit.

1) Monitoring results must be reported on a Discharge Monitoring Report (DMR) or forms provided or specified by the Director for reporting results of monitoring of sludge use or disposal practices.

2) If the permittee monitors any pollutant more frequently than required by the permit, using test procedures approved under 40 CFR Part 136 or in the case of sludge use or disposal, approved under 40 CFR Part 136 unless otherwise specified in 40 CFR Part 503, as specified in the permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the DMR, or sludge reporting form specified by the Director.

3) Calculations for all limitations which require averaging of measurements shall utilize an arithmetic mean unless otherwise specified by the Director in the permit.

e. Compliance schedules. Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this permit shall be submitted no later than 14 days following each schedule date.

f. Twenty-four hour reporting.

1) The permittee shall report any noncompliance which may endanger health or the environment. Any information shall be provided orally within 24 hours from the time the permittee becomes aware of the circumstances. A written submission shall also be provided within 5 days of the time the permittee becomes aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

2) The following shall be included as information which must be reported within 24 hours under this paragraph.

i) Any unanticipated bypass which exceeds any effluent limitation in the permit. (See 40 CFR 122.41(g).)

ii) Any upset which exceeds any effluent limitation in the permit.

iii) Violation of a maximum daily discharge limitation for any of the pollutants listed by the Director in the permit to be reported within 24 hours. (See 40 CFR 122.44(g).)

3) The Director may waive the written report on a case-by case basis for reports under paragraph (6)(ii) of this section if the oral report has been received within 24 hours.

g. Other noncompliance. The permittee shall report all instances of noncompliance not reported under paragraphs (4), (5), and (6) of this section, at the time monitoring reports are submitted. The reports shall contain the information listed in paragraph (6) of this section.

h. Other information. Where the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the Director, it shall promptly submit such facts or information.

14. Bypass [40 CFR 122.41(m)]

a. Definitions

1) "Bypass" means the intentional diversion of waste streams from any portion of a treatment facility.

2) "Severe property damage" means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

b. Bypass not exceeding limitations. The permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of paragraphs (3) and (4) of this section.

c. Notice-

1) Anticipated bypass. If the permittee knows in advance of the need for a bypass, it shall submit prior notice, of possible at least ten days before the date of the bypass.

2) Unanticipated bypass. If the permittee shall submit notice of an unanticipated bypass as required in paragraph (a)(6) of section 13) (24-hour notice).

d. Prohibition of bypass.

1) Bypass is prohibited, and the Director may take enforcement action against a permittee for bypass, unless:

i) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

ii) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and

iii) The permittee submitted notices as required under paragraph (3) of this section.

2) The Director may approve an anticipated bypass, after considering its adverse effects, if the Director determines that it will meet the three conditions listed above in paragraph (4)(i) of this section.

15. Upset [40 CFR 122.41(n)]

a. Definition.
"Upset" means an exceptional incident in which there is unintentional and temporary noncompliance with technology based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

b. Effect of an upset. An upset constitutes an affirmative defense to an action brought for noncompliance with such technology based permit effluent limitations if the requirements of paragraph (3) of this section are met. No

determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review.

c. Conditions necessary for a demonstration of upset. A permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

1) An upset occurred and that the permittee can identify the cause(s) of the upset;

2) The permitted facility was at the time being properly operated; and

3) The permittee submitted notice of the upset as required in paragraph 13)(6)(ii)(B)(24-hour notice).

4) The permittee complied with any remedial measures required under 40 CFR 122.41(d).

d. Burden of proof. In any enforcement proceeding the permittee seeking to establish the occurrence of an upset has the burden of proof.

16. Existing manufacturing, commercial, mining, and silvicultural dischargers [40 CFR 122.42(a)]

In addition to the reporting requirements under 40 CFR 122.41(l), all existing manufacturing, commercial, mining, and silvicultural dischargers must notify the Director as soon as they know or have reason to believe:

a. That any activity has occurred or will occur which would result in the discharge, on a routine or frequent basis, of any toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following "notification levels":

1) One hundred micrograms per liter (100 ug/l);

2) Two hundred micrograms per liter (200 ug/l) for acrolein and acrylonitrile; five hundred micrograms per liter (500 ug/l) for 2,4-dinitrophenol and for 2-methyl-4,6-dinitrophenol; and one milligram per liter (1 mg/l) for antimony;

3) Five times the maximum concentration value reported for that pollutant in the permit application in accordance with 40 CFR 122.21(g)(7); or

4) The level established by the Director in accordance with 40 CFR 122.44(f).

b. That any activity has occurred or will occur which would result in any discharge, on a nonroutine or infrequent basis, of a toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following "notification levels":

1) Five hundred micrograms per liter (500 ug/l);

2) One milligram per liter (1 mg/l) for antimony;

3) Ten (10) times the maximum concentration value reported for that pollutant in the permit application in accordance with 40 CFR 122.21(g)(7);

4) The level established by the Director in accordance with 40 CFR 122.44(f).

17. Publicly owned treatment works [40 CFR 122.42(b)]

This section applies only to publicly owned treatment works as defined at 40 CFR 122.2.

a. All POTW's must provide adequate notice to the Director of the following:

1) Any new introduction of pollutants into the POTW from an indirect discharger which would be subject to section 301 or 306 of CWA if it were directly discharging those pollutants; and

2) Any substantial change in the volume or character of pollutants being introduced into that POTW by a source introducing pollutants into the POTW at the time of issuance of the permit.

3) For purposes of this paragraph, adequate notice shall include information on (i) the quality and quantity of effluent introduced into the POTW, and (ii) any anticipated impact of the change on the quantity or quality of effluent to be discharged from the POTW.

b. [The following condition has been established by Region 9 to enforce applicable requirements of the Resource Conservation and Recovery Act] Publicly owned treatment works may not receive hazardous waste by truck, rail, or dedicated pipe except as provided under 40 CFR 270. Hazardous wastes are defined at 40 CFR 261 and include any mixture containing any waste listed under 40 CFR 261.31 - 261.33. The Domestic Sewage Exclusion (40 CFR 261.4) applies only to wastes mixed with domestic sewage in a sewer leading to a publicly owned treatment works and not to mixtures of hazardous wastes and sewage or septage delivered to the treatment plant by truck.

18. Reopener clause [40 CFR 122.44(c)]

This permit shall be modified or revoked and reissued to incorporate any applicable effluent standard or limitation or standard for sewage sludge use or disposal under sections 301(b)(2)(C), and (D), 304(b)(2), 307(a)(2) and 405(d) which is promulgated or approved after the permit is issued if that effluent or sludge standard or limitation is more stringent than any effluent limitation in the permit, or controls a pollutant or sludge use or disposal practice not limited in the permit.

19. Privately owned treatment works

[The following conditions were established by Region 9 to enforce applicable requirements of the Resource Conservation and Recovery Act and 40 CFR 122.44(m)]

This section applies only to privately owned treatment works as defined at 40 CFR 122.2.

a. Materials authorized to be disposed of into the privately owned treatment works and collection system are typical domestic sewage. Unauthorized materials are hazardous waste (as defined at 40 CFR Part 261), motor oil, gasoline, paints, varnishes, solvents, pesticides, fertilizers, industrial wastes, or other materials not generally associated with toilet flushing or personal hygiene, laundry, or food preparation, unless specifically listed under "Authorized Non-domestic Sewer Dischargers" elsewhere in this permit.

b. It is the permittee's responsibility to inform users of the privately owned treatment works and collection system of the prohibition against unauthorized materials and to ensure compliance with the prohibition. The permittee must have the authority and capability to sample all discharges to the collection system, including any from septic haulers or other unsewered dischargers, and shall take and analyze such samples for conventional, toxic, or hazardous pollutants when instructed by the permitting authority or by an EPA, State or Tribal inspector. The permittee must provide adequate security to prevent unauthorized discharges to the collection system.

c. Should a user of the privately owned treatment works desire authorization to discharge non-domestic wastes, the permittee shall submit a request for permit modification and an application, pursuant to 40 CFR 122.44(m), describing the proposed discharge. The application shall, to the extent possible, be submitted using EPA Forms 1 and 2C, unless another format is requested by the permitting authority. If the privately owned treatment works or collection system user is different from the permittee, and the permittee agrees to allow the non-domestic discharge, the user shall submit the application and the

permittee shall submit the permit modification request. The application and request for modification shall be submitted at least 6 months before authorization to discharge non-domestic wastes to the privately owned treatment works or collection system is desired.

20. Transfers by modification [40 CFR 122.61(a)]

Except as provided in section 21), a permit may be transferred by the permittee to a new owner or operator only if the permit has been modified or revoked and reissued (under 40 CFR 122.62(b)(2)), or a minor modification made (under 40 CFR 122.63(d)), to identify the new permittee and incorporate such other requirements as may be necessary under CWA.

21. Automatic transfers [40 CFR 122.61(b)]

As an alternative to transfers under section 20), any NPDES permit may be automatically transferred to a new permittee if:

a. The current permittee notifies the Director at least 30 days in advance of the proposed transfer date in paragraph (2) of this section;

b. The notice includes a written agreement between the existing and new permittees containing a specific date for transfer of permit responsibility, coverage, and liability between them; and

c. The Director does not notify the existing permittee and the proposed new permittee of his or her intent to modify or revoke and reissue the permit. A modification under this subparagraph may also be a minor modification under 40 CFR 122.63. If this notice is not received, the transfer is effective on the date specified in the agreement mentioned in the paragraph (2) of this section.

22. Minor modification of permits [40 CFR 122.63]

Upon the consent of the permittee, the Director may modify a permit to make the corrections or allowances for changes in the permitted activity listed in this section, without following the procedures of 40 CFR Part 124. Any permit modification not processed as a minor modification under this section must be made for cause and with 40 CFR Part 124 draft permit and public notice as required in 40 CFR 122.62. Minor modifications may only:

a. Correct typographical errors;

b. Require more frequent monitoring or reporting by the permittee;

c. Change an interim compliance date in a schedule of compliance, provided the new date is not more than 120 days after the date specified in the existing permit and does not interfere with attainment of the final compliance date requirement; or

d. Allow for a change in ownership or operational control of a facility where the Director determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittees has been submitted to the Director.

e. Change the construction schedule for a discharger which is a new source. No such change shall affect a discharger's obligation prior to discharge under 40 CFR 122.29.

f. Delete a point source outfall when the discharge from that outfall is terminated and does not result in discharge of pollutants from other outfalls except in accordance with the permit limits.

g. When the permit becomes final and effective on or after March 9, 1982, conform to changes respecting 40 CFR 122.41(e), (l), (m)(4)(i)(B), (n)(3)(i), and 122.42(a) issued September 26, 1984.

h. Incorporate conditions of a POTW pretreatment program that has been approved in accordance with the procedures in 40 CFR 403.11 as enforceable conditions of the POTW's permit.

23. Termination of permits [40 CFR 122.64]

The following are causes for terminating a permit during its term, or for denying a permit renewal application:

a. Noncompliance by the permittee with any condition of the permit;

b. The permittee's failure in the application or during the permit issuance process to disclose fully all relevant facts, or the permittee's misrepresentation of any relevant facts at any time;

c. A determination that the permitted activity endangers human health or the environment and can only be regulated to acceptable levels by permit modification or termination; or

d. A change in any condition that requires either a temporary or a permanent reduction or elimination of any discharge controlled by the permit (for example, plant closure or termination of discharge by connection to a POTW).

24. Availability of Reports [Pursuant to Clean Water Act Section 308]

Except for data determined to be confidential under 40 CFR Part 2, all reports prepared in accordance with the terms of this permit shall be available for public inspection at the offices of the Regional Administrator. As required by the Act, permit applications, permits, and effluent data shall not be considered confidential.

25. Removed Substances [Pursuant to Clean Water Act Section 301]

Solids, sludges, filter backwash, or other pollutants removed in the course of treatment or control of wastewaters shall be disposed of in a manner such as to prevent any pollutant from such materials from entering navigable waters.

26. Severability [Pursuant to Clean Water Act Section 512]

The provisions of this permit are severable, and if any provision of this permit, or the application of any provision of this permit to any circumstance, is held invalid, the application of such provision to other circumstances, and remainder of this permit, shall not be affected thereby.

27. Civil and Criminal Liability [Pursuant to Clean Water Act Section 309]

Except as provided in permit conditions on "Bypass" (Section 14) and "Upset" (Section 15), nothing in this permit shall be construed to relieve the permittee from civil or criminal penalties for noncompliance.

28. Oil and Hazardous Substance Liability [Pursuant to Clean Water Act Section 311]

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under Section 311 of the Clean Water Act.

29. State or Tribal Law [Pursuant to Clean Water Act Section 510]

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the operator from any responsibilities, liabilities, or penalties established pursuant to any applicable State or Tribal law or regulation under authority preserved by Section 510 of the Clean Water Act.

Mailing List for Canneries' NPDES Draft Permit

Lieutenant Colonel James T. Muratsuchi
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U.S. Army Corps of Engineers
Honolulu District
Attn: Operations Branch
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Regional Director
U.S. Department of Commerce
National Oceanic and Atmospheric Administration
National Marine Fisheries Service
Southwest Region
300 S. Ferry St.
Terminal Island, CA 90731

John J. Naughton
Pacific Islands Environmental Coordinator
National Marine Fisheries Service
Pacific Area Office - Southwest Region
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Honolulu, HI 96822-2396

Robert Smith
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U.S. Coast Guard Liaison Officer
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American Samoa Environmental Quality Commission
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Emeryville, CA 94608

2/20/92

Pati/Sheila:

Here's the preliminary draft permits, fact sheets and transmittal letters for you to look at one last time before we send to canneries. If no problems with it, we will fax to them after getting your ok. Changes made are as follows: → (Wei, Cox, Costa)

1. Section A: Changed pH sample type from composite to continuous.

2. Section D: Method of determining monitoring stations described as we discussed.

3. Section H. Coral reef survey included as discussed.

4. Section I. Circulation studies, 4 stations specified deleted.

5. Section K: Entitled "Pollution Prevention Program" and combines the previous BMP and Waste Minimization sections into one. (We didn't discuss this with you on Tuesday but Doug thought combining these two sections made more sense.) There are some new items under #2 and #3. Norm wanted item #3 deleted since the canneries are already doing some of this but Doug thought since it was a draft draft, it wouldn't hurt to keep it in and get some documentation from the canneries on exactly what they're doing and if sufficient, it could be taken out in the final draft.

We're also working on the public notice, aiming for publication on March 9th. Is it possible to have your office coordinate with the Samoa News for publication and payment of the ad (just because logistically it easier). If not, we can work it from here. We'll have a copy of the proposed permit for public review kept at your office. Should we also send copies to the ASG agencies which commented on the EIS? Local Coast Guard? Le Vaomatua? Please advise. (It may be easier for us to send them their own copies than have them come down to your office and have to make copies there.) Thanks.

TOXICITY STUDY GRANT APPLICATION: Did the Governor sign the application yet? Norm is going to Washington next week and can put in a plug for this. Let me know the status of it/fax copy if you have one.

DAWN: Norm working on his piece. He hopes to get it done this week. Will send pictures and negatives of us tomorrow.

RA

Total 39 pages

2/5/92

To: Pat Young, OPINAP
Frm: Sheila Wiegman, ASEPA
Re: Call

It's OK to call at 11:00 am. Samoa Packing is testing their effluent for chlorine residual and may have results in a day or two. According to FDA rules, cannery water has to have a chlorine (free chlorine) concentration of 0.2 - 0.5 ppm. What Norman Wei gave you was likely the dosage. It would be extremely expensive to chlorinate to 2-5 ppm. Star-kist is unable to measure for chlorine residual on island at this time, but I guess Norman Wei will be here next week. I feel on both issues, chlorine & coral reef survey, we have provided justification for our position.